

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

IN RE WASHINGTON MUTUAL
MORTGAGE BACKED SECURITIES
LITIGATION,

This Document Relates to: ALL CASES

Master Case No. C09-037 MJP

[Consolidated with: Case Nos.
CV09-0134 MJP, CV09-0137 MJP, and
CV09-01557 MJP]

**DECLARATION OF JEE YOUNG YOU
IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL FURTHER
PRODUCTION FROM BOILERMAKERS
NATIONAL ANNUITY TRUST**

**NOTE ON MOTION CALENDAR:
AUGUST 12, 2011**

I, Jee Young You, hereby declare as follows under penalty of perjury pursuant to 28
U.S.C. § 1746:

1. I am an attorney at law licensed to practice in the State of California. I am an
attorney at the firm of Bingham McCutchen LLP, counsel of record for Defendants WaMu
Asset Acceptance Corporation, WaMu Capital Corporation, David Beck, Diane Novak,
Richard Careaga and Rolland Jurgens (collectively, "Defendants") in this action. By virtue of
my representation of Defendants in this matter, I have personal knowledge of the facts set
forth below, and could and would testify competently to those facts if called to do so.

Declaration of Jee Young You: (CV09-037 MJP) - 1

HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, Washington 98101-2925
Telephone: (206) 623-1745
Facsimile: (206) 623-7789

1 2. On November 22, 2010 and December 27, 2010, Defendants propounded two
2 sets of requests for production of documents ("Requests"). In response, Defendants received
3 seven documents from Plaintiff Boilermakers National Annuity Trust ("Boilermakers") on
4 January 12, 2011 and February 9, 2011. The production contained no ESI or e-mails.
5

6 3. On March 4, 2011, Bingham partner John Pernick sent a meet and confer letter
7 regarding the deficiencies in Boilermakers' production. A true and correct copy of the letter
8 from John Pernick to Plaintiffs' counsel (March 4, 2011) is attached as Exhibit A.
9

10 4. On March 14, 2011, we received a letter from Plaintiffs' counsel, responding
11 to the March 4, 2011 letter. A true and correct copy of the letter from Christopher Lometti to
12 John Pernick (March 14, 2011) is attached as Exhibit B. Along with the letter, on March 14,
13 Boilermakers produced three additional documents. On April 29, 2011, Boilermakers
14 produced one additional document: redacted minutes of the Boilermakers board of directors'
15 September 7, 2008 meeting.
16

17 5. Boilermakers' production of eleven documents consists of two redacted
18 account summaries from the custodian bank; two investment policy statements (dated June
19 2006 and June 2008); two contracts with Boilermakers' investment consultant, Callan
20 Associates, Inc. ("Callan"); Boilermakers' investment guidelines for one of Boilermakers'
21 fixed income investment managers, McMorgan & Company ("McMorgan"); three pieces of
22 correspondence; and board minutes from a meeting of the board of trustees of Boilermakers.
23 Boilermakers has produced *no* documents concerning (a) its decision to invest in the
24 Securities in February 2007 and February 2008; (b) its or its investment managers' valuation
25 of the Securities and/or other similar RMBS; or (c) its knowledge of the origination and
26 underwriting practices for the loans backing the Securities.
27
28

1 6. On March 21, 2011, the parties met and conferred regarding the many
2 continuing deficiencies in Boilermakers' productions. During the call, Defendants requested
3 documents responsive to various Requests regarding Boilermakers or its investment advisors'
4 knowledge of the mortgage industry; investment in other RMBS; knowledge of underwriting,
5 securitization and origination practices; communications with mortgage originators or
6 investment advisors regarding RMBS; different valuation methodologies; and other such
7 information directly related to knowledge and damages. Boilermakers responded, as they
8 represented in their March 14, 2011 letter, that apart from Request Nos. 12, 23 and 25, to
9 which they objected on the basis of burden, vagueness, ambiguity and relevance,
10 Boilermakers had searched for and produced all relevant documents in their possession or
11 custody.

12 7. Following the March 21, 2011 call, Defendants did not move to compel further
13 production based on the March 14 letter and the representation made during the meet and
14 confer by Boilermakers' counsel that (a) counsel had used reasonable means to search for
15 documents, including conducting searches of electronic files using a "broad range of search
16 terms"; (b) documents were produced in the form "ordinarily maintained" by Plaintiffs in the
17 normal course of business, and (c) no responsive documents were withheld.

18 8. Relying on the representation of Boilermakers in their March 14 letter and
19 March 21 meet and confer, Defendants were not aware of the gaps in the production until the
20 deposition of Boilermakers' designed representative Mr. Rodriguez, and the investment
21 advisors' productions, which continued into May 2011. The document productions and the
22 testimony of Mr. Rodriguez both confirmed the wide discrepancy between the documents in
23 Boilermakers' custody and control and the scant production made to Defendants to date.

1 Following Boilermakers' letter and the meet and confer, Defendants received third party
2 productions from Callan Associates (April 4, 2011) and McMorgan & Company (May 26-27,
3 2011). In the third party productions, there were emails to and from Boilermakers regarding
4 the investment in the Certificates, including an email regarding the performance of the fixed
5 income portfolio, as well as a set of monthly and quarterly reports from both investment
6 advisors to Boilermakers. The emails and reports contain information relevant and responsive
7 to the Requests, including the Certificates' ratings, Boilermakers' allocation of investment in
8 mortgage-backed securities, Boilermakers' investment strategies, Boilermakers' investment in
9 the Certificates, and information about market conditions. Defendants have not received all
10 of Callan's quarterly reports from the 2007-2008 time period, none of Callan's monthly
11 snapshot performance reports, and have received only a fraction of McMorgan's quarterly
12 reports.
13
14
15

16 9. Following the April 26, 2011 deposition and the discovery of the gaps in
17 Boilermakers' production, the parties met and conferred on April 29, 2011 to discuss the
18 status of discovery and potential extension of the briefing schedule on the class certification
19 motion. During this call, Defendants discussed the deficiencies identified in Boilermakers'
20 production, and Boilermakers apparently abandoned its prior position that it had produced all
21 responsive documents and refused to produce the investment advisors' reports on the basis
22 that they were "cumulative" of the two redacted custodian bank reports already produced.
23 However, Boilermakers also indicated it would investigate whether it had any additional
24 responsive documents to produce, and/or reevaluate its position regarding its decision to
25 withhold documents. Boilermakers also responded that any emails regarding the Securities
26 was produced, but did not respond to Defendants' more general request for all relevant
27
28

1 electronic communications.

2 10. By May 26, 2011, Boilermakers failed to get back to Defendants regarding
3 whether a supplemental production would be forthcoming. Therefore, Defendants sent
4 another meet and confer letter regarding the status of discovery and requesting the production
5 of the reports, emails, and electronic documents that were missing from the production. A
6 true and correct copy of the letter from John Pernick to Plaintiffs' Counsel (May 27, 2011) is
7 attached as Exhibit C.
8

9 11. Plaintiffs' assertion that the custodian bank reports are cumulative of the
10 investment advisors' is factually incorrect, based on a comparison of the documents. The
11 custodian bank reports are merely redacted account statements, which provide limited
12 information regarding the WaMu Mortgage Pass Thru Certificate Series 2006-AR7, such as
13 the balance, debit and credit on the account. In contrast, the McMorgan reports provide
14 descriptive information regarding responses to particular inquiries by Boilermakers;
15 valuations of various RMBS; description of McMorgan's "Philosophy, Strategy & Style";
16 investment summary; fixed income quality ratings; and transaction activity. Callan's
17 quarterly reports, similarly, provide descriptive information regarding Boilermakers' monthly
18 asset allocation report; quarterly investment measurement report; market overview;
19 comparison of investment manager returns to indexes; quarterly total fund attribution;
20 cumulative performance relative to target; cumulative total fund attribution; asset class risk
21 and return; investment manager returns and peer group rankings; portfolio-specific details
22 (including investment-level details); and market indicators.
23

24 12. On June 2, 2011, Boilermakers responded to the May 27 letter, indicating that
25 it will not be supplementing its production. A true and correct copy of the letter from
26
27
28

1 Christopher Lometti to Defendants' Counsel (June 2, 2011) is attached as Exhibit D.

2 13. A true and correct copy of excerpts from the transcript from the deposition of
3 Mario Rodriguez (April 26, 2011) is attached as Exhibit E.

4 14. A true and correct copy of Plaintiff Boilermakers National Annuity Trust's
5 Responses and Objections to Defendants' Interrogatories, Set One, is attached as Exhibit F.
6

7 EXECUTED this 26th day of July, 2011, at San Francisco, California.
8
9
10

11 s/Jee Young You
12 Jee Young You
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of July, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Floyd Abrams - fabrams@cahill.com

Michael H. Barr - mbarr@sonnenschein.com

Walter Eugene Barton -

gbarton@karrtuttle.com, nrandall@karrtuttle.com, danderson@karrtuttle.com

Steve W. Berman -

steve@hbsslaw.com, robert@hbsslaw.com, heatherw@hbsslaw.com

S Douglas Bunch - dbunch@cohenmilstein.com

Steven P Caplow -

stevencaplow@dwt.com, patrickwatts@dwt.com, sheilarowden@dwt.com, jason

Schattenkerk@dwt.com

Kevin P Chavous - kchavous@sonnenschein.com

James J. Coster - jcoster@ssbb.com, managingclerk@ssbb.com, jregan@ssbb.com

Hal D Cunningham - hcunningham@scott-

scott.com, halcunningham@gmail.com, efile@scott-scott.com

Kerry F Cunningham - kerry.cunningham@dlapiper.com

Leslie D Davis - ldavis@sonnenschein.com

Corey E Delaney -

corey.delaney@dlapiper.com, kerry.cunningham@dlapiper.com, richard.hans@dlapiper.com, patrick.smith@dlapiper.com

Joshua S. Devore - jdevore@cohenmilstein.com, efilings@cohenmilstein.com

Joseph A. Fonti - jfonti@labaton.com, ElectronicCaseFiling@labaton.com

Larry Steven Gangnes -

gangnesl@lanepowell.com, sebringl@lanepowell.com, docketing-sea@lanepowell.com, donnellyjoss@lanepowell.com

Jonathan Gardner - jgardner@labaton.com

Joseph P Guglielmo - jguglielmo@scott-scott.com, efile@scott-scott.com

Richard F Hans - richard.hans@dlapiper.com, dorinda.castro@dlapiper.com

David Daniel Hoff - dhoff@tousley.com, efile@tousley.com

Julie Hwang - jhwang@labaton.com, ElectronicCaseFiling@labaton.com

Geoffrey M Johnson - gjohnson@scott-scott.com, efile@scott-scott.com

Matthew B. Kaplan - mkaplan@cohenmilstein.com, efilings@cohenmilstein.com

1 Stellman Keehnel -stellman.keehnel@dlapiper.com,patsy.howson@dlapiper.com
2 Paul Joseph Kundtz -
3 pkundtz@riddellwilliams.com,mdowns@riddellwilliams.com,mbergquam@ri
4 ddellwilliams.com
5 Joel P Laitman -jlaitman@cohenmilstein.com
6 Bruce Earl Larson -blarson@karrtuttle.com,psteinfeld@karrtuttle.com
7 Mike Liles , Jr-mliles@karrtuttle.com
8 Christopher E Lometti -clometti@cohenmilstein.com
9 John D Lowery -jlowery@riddellwilliams.com,dhammonds@riddellwilliams.com
10 Douglas C McDermott -doug@mcdermottnewman.com,eric@mcdermottnewman.com
11 Bradley T. Meissner -bradley.meissner@dlapiper.com
12 Timothy Michael Moran -
13 moran@kiplinglawgroup.com,cannon@kiplinglawgroup.com
14 Walter W. Noss -wnoss@scott-scott.com,efile@scott-scott.com
15 Brian O. O'Mara -bomara@csgrr.com
16 Barry Robert Ostrager -bostrager@stblaw.com,managingclerk@stblaw.com
17 Kenneth J Pfaehler -kenneth.pfaehler@snrdenton.com,nicole.reeber@snrdenton.com
18 Daniel B Rehns -drehns@cohenmilstein.com,efilings@cohenmilstein.com
19 Kenneth M Rehns -krehns@cohenmilstein.com
20 Julie Goldsmith Reiser -jreiser@cohenmilstein.com
21 Serena Richardson -srichardson@labaton.com,ElectronicCaseFiling@labaton.com
22 Rogelio Omar Riojas -
23 omar.riojas@dlapiper.com,nina.marie@dlapiper.com,karen.hansen@dlapiper.com
24 Darren J Robbins -e_file_sd@csgrr.com
25 Tammy Roy -troy@cahill.com
26 Joshua M. Rubins -jrubs@ssbb.com,managingclerk@ssbb.com,jregan@ssbb.com
27 Stephen M. Rummage -steverummage@dwt.com,jeannecadley@dwt.com
28 Hollis Lee Salzman -hsalzman@labaton.com,ElectronicCaseFiling@labaton.com
29 Paul Scarlato -pscarlato@labaton.com,ElectronicCaseFiling@labaton.com
30 Arthur L Shingler -ashingler@scott-scott.com,efile@scott-scott.com
31 Gavin Williams Skok -gskok@riddellwilliams.com,dhammonds@riddellwilliams.com
32 Richard A Speirs -rspeirs@cohenmilstein.com
33 Kim D Stephens -
34 kstephens@tousley.com,wacruz@tousley.com,cbonifaci@tousley.com
35 Robert D Stewart -stewart@kiplinglawgroup.com,cannon@kiplinglawgroup.com
36 Janissa Ann Strabuk -jstrabuk@tousley.com,wacruz@tousley.com

1 Steven J Toll -stoll@cohenmilstein.com,efilings@cohenmilstein.com

2 Mary Kay - Vyskocil mvyskocil@stblaw.com

3 Dennis H Walters -dwalters@karrtuttle.com,wbarker@karrtuttle.com

4 Adam Zurofsky -azurofsky@cahill.com

5 DATED this 26th day of July, 2011 at Seattle, Washington.

6 By s/ Brian C. Free

7 Brian C. Free, WSBA #35788
8 1221 Second Avenue, Suite 500
9 Seattle WA 98101-2925
10 Telephone: (206) 623-1745
11 Facsimile: (206) 623-7789
12 Email: bcf@hcmp.com

13 ND: 19719 002 4830-4627-0218v1
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28